United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

To Be Aruged by ROBERT WEISWASSER, ESQ.

75-2135

ORIGINAL

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 75-2135

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UNITED STATES OF AMERICA ex rel.
JOEL TILLINGER,

Petitioner-Appellant,

v.

DISTRICT ATTORNEY, DADE COUNTY,
FLORIDA, and WARDEN, QUEENS HOUSE
OF DETENTION, N.Y., and DISTRICT
ATTORNEY, QUEENS COUNTY,

Respondents-Appellees.

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P/S

BRIEF AND ~~RECORD~~ APPENDIX IN BEHALF OF
PETITIONER-APPELLANT, JOEL TILLINGER

WEISWASSER & WEISWASSER
Attorneys for Petitioner-Appellant
32 Court Street
Brooklyn, New York 11201
Telephone No. (212) JA-2-1666

ROBERT WEISWASSER, ESQ.
Of Counsel

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DISTRICT ATTORNEY, DADE COUNTY, FLORIDA, and WARDEN, QUEENS HOUSE OF DETENTION, N.Y., and DISTRICT ATTORNEY, QUEENS COUNTY,

Respondents-Appellees.

----------X

BRIEF ON BEHALF OF
PETITIONER-APPELLANT, JOEL TILLINGER

STATEMENT

On September 9, 1975 the Honorable Henry Bramwell Justice of the United States District Court, Eastern District of New York rendered a Memorandum and Order pursuant to petitioners writ of Habeas Corpus permitting Florida thirty (30) days to extradite petitioner or in the alternative if no action is taken then a hearing to determine whether the Florida action should be dismissed.

This is an appeal from the order of Judge Bramwell granting the Florida authorities thirty (30) days to act after repeated failures of said authorities to honor petitioner's request for extradition and disposition of his matters.

FACTS

On or about June 23, 1971 a warrant for the arrest of appellant, JOEL LAWRENCE TILLINGER, was issued from the Dade County, Florida, Criminal Court under case number 71-4802 charging him with Forgery; Uttering a Forged Instrument; Grand Larceny by Unlawful Use of Credit Card; Buying, Receiving or Concealing Stolen Property. Thereafter on or about June 24, 1971 a two count information was prepared by the Dade County prosecutor's office, the State attorney, charging appellant with the aforementioned crimes which was filed in the Dade County Criminal Court on June 29, 1971 under number 71-3757. The crimes charged in said information allegedly were committed on April 13, 1971. On July 27, 1971 a second warrant was issued under case number 71-3757 for appellant.

Shortly thereafter on August 27, 1971 an additional information was prepared against appellant charging him with Possession of Stolen Property and was filed on August 30, 1971 under case number 71-6903. The crime charged in this information allegedly took place between June 1, 1970 and April 1, 1971. Thereafter a warrant for appellant was issued under case number 71-6903 on August 30, 1971. It is further submitted, upon information and belief that an additional information against appellant was filed in the same court under case number 71-4802 charging him with Forgery, etc.

The appellant while incarcerated in New York State pursuant to a conviction on State charges received notification for the first time

on June 18, 1973 that there were outstanding warrants for him from the State of Florida. Immediately thereafter the appellant claims he notified the Florida authorities that he was waiving extradition, demanded his return and was seeking a speedy disposition of the Florida charges in the anticipation that he could receive a sentence to run concurrent with the sentence he was then serving. The Florida authorities deny receiving such a request. There can be no dispute that as of June 18, 1973 the authorities in Florida were aware of appellant's whereabouts and failed to act.

The Florida authorities took no action in this matter until December, 1974 when they lodged a warrant against appellant upon his parole from the New York Correctional Facility at Auburn and arrested him. Approximately ninety (90) days thereafter said warrant was dismissed upon Florida's failure to act. Thereafter on February 15, 1975 appellant was apprehended in Queens County pursuant to the fugitive warrant which was reissued by the Florida authorities. This warrant as the initial one was dismissed after ninety (90) days upon Florida's failure to take any action. Subsequent to the dismissal of the second fugitive warrant appellant was arrested again on June 20, 1975 pursuant to a Governers Warrant which is the subject of the instant proceeding.

On July 2, 1975, Judge Bramwell signed an Order to Show Cause pursuant to appellant's petition for a Writ of Habeas Corpus seeking his release on bail pending the determination of his motion to quash the Governer's Warrant. Judge Jacob Mishler, on July 16, 1975

issued an Order releasing appellant on $5000 bail but stayed said order until July 31, 1975 to give the Florida authorities an opportunity to proceed. On July 21, 1975 Judge Mishler modified his July 16, 1975 order and reduced bail with the consent of the Queens County District Attorney's office to $1000 and permitted immediate release upon posting of the bail.

Judge Bramwell on August 6, 1975 issued an Order to Show Cause in this matter directing the Florida authorities to show cause why the writ should not be issued. Thereafter on August 21, 1975 an affidavit in Aid of Extradition was filed by the Florida authorities. On September 9, 1975 Judge Bramwell issued a Memorandum And Order which gave the Florida authorities thirty (30) days to extradite appellant and if such were not done then ordering a hearing to determine if the Florida actions should be dismissed. The instant action is an appeal from said order.

POINT

THE COURT ERRED IN GRANTING A THIRTY (30) DAY PERIOD FOR THE EXTRADITION OF PETITIONER RATHER THAN ORDERING AN IMMEDIATE HEARING TO DETERMINE IF THE FLORIDA CHARGES SHOULD BE DISMISSED

The interests of justice dictate that the appellant be afforded an opportunity to challange the Florida charges in the Federal District Courts in and for the Eastern District of New York rather than be subjected to the additional expense and inconvenience of commencing a defense in the State of Florida.

It is appellant's position that the charges in Florida must be dismissed because of the failure of the Florida authorities to afford him a speedy trial. The courts issuance of an order permitting an additional thirty day "grace" period for Florida to extradite appellant is highly prejudicial to appellant thus denying him due process.

The authorities in the State of Florida have failed to take any affirmative action in the way of extradition against appellant from June 18, 1973 until June 20, 1975 when he was apprehended on a Governors Warrant. During the intervening period two fugitive warrants were issued for the appellant each of which resulted in the incarceration of appellant for ninety (90) days, each of which was dismissed upon Florida's failure to extradite.

Florida contends, as is evidence by the affidavit of John Lipinski an Assistant State Attorney, Dade County, Florida, that

appellant never demanded a speedy trial and therefore is not entitled to dismissal of charges on that basis. It is vital to the defense of the appellant that witnesses who are incarcerated in the State of New York testify as to his efforts demanding a speedy trial as far back as June 18, 1973. The main witness necessary to appellant's position is one Jerome Rosenberg,who is an inmate in New York State (an affidavit of Mr. Rosenberg is attached hereto and made a part of this record). All other witnesses who can testify on behalf of appellant reside in the State of New York with the majority residing within the confines of the Eastern District of New York. It is further submitted that the financial burden and subsequent hardship caused to appellant would be excessive and prejudicial to appellant.

It is necessary at this time to discuss the merits of appellant's position that the Florida charges should be dismissed because of a denial of a speedy trial in that such bolsters appellant's position that it is unjustified and a violation of his rights to require him to return to Florida.

In determining whether an individual has been denied his Constitituional Right to a speedy trial the United States Supreme Court set forth in Barker v. Wingo, 407 U.S. 514, 92 S. Ct. 2182 four factors which are to be considered in the determination of a motion of this type. These factors are: (1) length of delay; (2) reason for the delay; (3) the defendants assertion of his right; (4) prejudice to the defendant (Barker v. Wingo, supra, at p. 530).

Dealing first with the length of delay in this case it is noteworthy that the incidents in question are alleged to have taken place mainly in April, 1971 with one possibly going as far back as June, 1970. While the criminal informations were filed in Florida in June and August, 1971 the first formal indication of Florida's knowledge of the appellants whereabouts (that counsel knows) is the communication to the New York authorities dated June 18, 1973. Therefore the delay from the filing of the criminal information is approximately forty-eight (48) months and approximately twenty-four (24) months passed from the June 18, 1973 notification until the arrest of appellant on June 20, 1975 pursuant to the Governer's Warrant. The prosecutor as is evidenced by his affidavit offers no viable excuse for the delay and obviously cannot justify the failure to extradite appellant after his apprehension on two previously issued fugitive warrants.

As Chief Justice Burger stated in Dickey v. Florida, 398 U.S. 30 at page 37:

> "The right to a speedy trial is not a theoretical or abstract right but one rooted in hard reality in the need to have charges promptly disposed. If the case for the prosecution calls for the defendant to meet charges....the time to meet them is when the case is fresh. State claims have never

"been favored by the law and far less so in criminal cases.....The duty of the charging authority is to provide a prompt trial".

The court continued at page 51 stating:

"A negligent failure by the government to ensure speedy trial is as damaging to the interests protected by the right as an intentional failure...."

The next factor to be considered is the reason for the delay in this matter. Once again the affidavit of the prosecutor from Florida fails to set forth any reason for the delay or attempt to excuse it. Approximately two (2) years passed between the filing of the first warrants in New York and the issuance of the Governors Warrant. If the Florida authorities had acted expeditiously there is little doubt that the appellant would have been in Florida shortly after the filing of the warrants on June 18, 1973 to face the charges pending there. Thereafter the Florida authorities had, so to speak, two more bites of the apple when the appellant was incarcerated for two (2) ninety (90) day periods pursuant to the previously issued fugitive warrants but again they failed to act. There can be no justification at this time for the failure of the authorities to act on the previous occasions. To reward the Florida authorities at this time for their inaction whether done intentionally or unintentionally is highly prejudicial to appellant and offends the interests of justice.

The third factor to be considered is the defendant's assertion of his right to a speedy trial. The appellant contends that immediately upon notification on June 18, 1973 that Florida had warrants for him, he contacted said authorities stating he would waive extradition and that he was seeking a speedy trial. If such is not sufficient it is obvious that appellant is asserting and has been asserting his right under the instant action.

The final factor to be considered under the rational of Barker v. Wingo (supra) is the prejudice to the appellant. Though the appellant need not make an affirmative demonstration of prejudice to prove a denial of his right to a speedy trial (Moore v. Arizona, 414 U.S. 25, 38 L. Ed 2d 183; U.S. v. Marion, 404 U.S. 207) actual prejudice in this situation is obvious. First of all if the Florida authorities had acted upon appellant's request in 1973 he would have had an opportunity to dispose of his cases at that time and possibly receive concurrent sentences with the one he was serving. Secondly because of the present five (5) year lapse since the alleged commission of the crimes the availability of witnesses becomes a factor as well as the fallibility of memory.

It is apparent from the foregoing facts that there is substantial merit to appellant's position and thus a great liklihood of success in his motion. The actual prejudice to the appellant that was previously set forth is compounded by the fact as previously mentioned that his witnesses for the speedy trial motion reside in New York with

one being incarcerated in New York. To place the burden upon the appellant both physical and financial to return to Florida to assert this aspect of his case is unconscionable.

Judge Bramwell in his decision dated September 9, 1975 wherein he granted Florida thirty (30) days to extradite appellant stated:

> "We note that, ordinarily, a court in the asylum state in extradition matters will limit its investigation to the circumstances of the extradition. See United States ex rel. Tucker v. Donovan, 321 F. 2d 114, 116 (2d Cir. 1963). Generally, only the demanding State, in this case Florida, is authorized to release the person charged. (Emphasis added)
>
> For this reason, we are affording the State of Florida thirty days from the date of this order in which to extradite Tillinger, so that he may both answer to the charges and assert his claims in that State".

It is most respectfully submitted that in view of the holdings in Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 35

L. Ed 2d 443, 93 S. Ct. 1123 (1973) and Ex parte Royall, 117 U.S. 241, 29 L. Ed 868, 6 S. Ct. 734 (1886) the decision of Judge Bramwell was erroneous. As Mr. Justice Brennen stated in his decision in Braden (supra) at page 449:

> "It is also true, as our Brother Rehnquist points out in dissent, that federal habeas corpus does not lie, absent 'special circumstances', to adjudicate the merits of an affirmative defense to a state criminal charge prior to a judgment of conviction by a state court. Ex parte Royall 117 U.S. 241, 253, 29 L. Ed 868, 6 S. Ct. 734 [1886]" (emphasis added)

And as Mr. Justice Rehnquist stated in his dissent at page 458:

> "But the fact that the State has a duty by no means leads to the conclusion that the failure to perform that duty can be raised by a prospective defendant on federal habeas corpus in advance of trial. The history of habeas corpus and the principles of federalism strongly support the approach eatablished by Ex parte Royall, supra, that, absent extraordinary circumstances, federal

"habeas corpus should not be used to adjudicate the merits of an affirmative defense to a state criminal charge prior to a judgment of conviction by a state court." (emphasis added)

The key words in the Braden (supra) decision are, absent extraordinary circumstances. It would be an absurdity for one to ask this Court to entertain an affirmative defense to a state case if the state was seeking to act expeditiously. To the contrary it would be a miscarriage of justice for this Court not to entertain such when extraordinary circumstances such as the ones presented by the instant case are set forth. These extraordinary circumstances were recognized by Judge Mishler when he stated in his decision dated July 16, 1975:

"Ordinarily, the district court has no right to fix bail in a habeas corpus proceeding where the petitioner challenges the right of the demanding state to have him removed from the asylum state.....

Under the unusual facts of this case where the defendant has been held in custody for two periods of 90 days, and the State of Florida has failed to act...." (emphasis added).

In considering the totality of the circumstances in the instant matter it is obvious that whatever delay occurred in this case is not attributable to the appellant. The State of Florida having failed to act on three previous occasions should not be permitted to have another chance to incarcerate the appellant unless it can prove to this court's satisfaction that it is not chargeable with the delay in this matter and that the appellant has not been prejudiced by it.

In view of the extraordinary facts that are presented in the instant case it is submitted that the Federal District Court for the Eastern District of New York can order an immediate hearing to determine if the charges pending against the appellant in Florida should be dismissed and that Judge Bramwell's thirty day extradition period was erroneously granted.

CONCLUSION

THE ORDER OF JUDGE BRAMWELL SHOULD BE MODIFIED DELETING THE THIRTY (30) DAY PERIOD FOR FLORIDA TO EXTRADITE APPELLANT AND AN IMMEDIATE HEARING SHOULD BE ORDERED TO DETERMINE WHETHER OR NOT THE FLORIDA CHARGES SHOULD BE DISMISSED

Respectfully submitted,

WEISWASSER & WEISWASSER
Attorneys for Petitioner-Appellant

RECORD ON APPEAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, ex rel.
JOEL TILLINGER,

Petitioner,

-against-

THE WARDEN, QUEENS HOUSE OF DETENTION FOR MEN,

Respondent.

----------x

ORDER

DIRECTING RESPONDENT TO SHOW CAUSE WHY A WRIT OF HABEAS CORPUS SHOULD NOT BE GRANTED

75C 1061

GOOD CAUSE APPEARING on reading the petition on file herein, it is

O R D E R E D, that the respondent appear before this Court in Courtroom 5, on the 11th day of July, 1975, at the hour of 9:30 AM o'clock of that day, to show cause why a Writ of Habeas Corpus should not issue herein as prayed for, and it is further

O R D E R E D, that a copy of this Order and the petition on file herein be served upon the Respondent and the District Attorney of Queens County on or before the 3rd day of July, 1975. at 4:30 P.M.

S/ Henry Bramwell
U.S.D.J.

Dated: July 2, 1975

BRAMWELL J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X

UNITED STATES OF AMERICA, ex rel.
JOEL TILLINGER,

Petitioner,

PETITION FOR WRIT OF HABEAS CORPUS

-against-

THE WARDEN, QUEENS HOUSE OF
DETENTION FOR MEN,

Respondent.
----------X

TO THE HONORABLE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK:

The petition of ROBERT I. WEISWASSER, ESQ., respectfully shows that:

1. Your petitioner makes this application herein on behalf of JOEL TILLINGER for a Writ of Habeas Corpus in that JOEL TILLINGER, a citizen of the United States is being unlawfully and unconstitutionally detained and restrained of his liberty by the Warden of the Queens House of Detention for Men, Kew Gardens, Queens, New York, within the district for which this Court sits.

2. The cause or pretense of the detention is that the Relator is being charged with being a fugitive from the State of Florida under a Governor's Warrant, signed by the Governor of the State of New York.

3. That pursuant to the Criminal Procedure Law of the State of New York, the fixing of bail is prohibited under the above mentioned Governor's Warrant.

That the only available means to test the detention within the State of New York, is by means of a Writ of Habeas Corpus, wherein the Relator denies he is the person so named in the warrant or that he was not within the State of Florida at the time of the commission of the underlying crime. In this instance the Relator admits that he is in fact the person so charged and was within the State of Florida at the time the crime was committed, thereby rendering a test in the New York Courts moot.

Rather the Relator claims that he is being held in deprivation of his constitutional right to a speedy trial in that the State of Florida has failed to act upon their warrant from June, 1973 until June, 1975. That the underlying crime was committed in April, 1971 and that on June 18, 1973 the Relator who was incarcerated in ~~Auburn~~ Ossining Correctional Facility, was advised that Florida had issued a warrant for him. He immediately notified the State of Florida that he wished to dispose of the charges. Florida failed to take any action until December, 1974, at which time upon his parole from Auburn Prison, a warrant was lodged against him in Cayauga County, New York. After Florida's failure to act within 90 days, as provided by statute, the warrant was dismissed.

That on February 15, 1975 the Relator was again arrested on a warrant from the State of Florida, but like the other time, they failed to act and said warrant was dismissed after 90 days.

That finally on June 20, 1975, the Relator was arrested

on the Governor's Warrant, which he now seeks to test before this Court.

4. That were the Relator forced to return to Florida to test the issue of the right to a speedy trial, it would result in further delay and undue and unnecessary burdens and hardships upon him.

5. No other application for this relief has been made except as herein stated.

WHEREFORE you petitioner prays that a Writ of Habeas Corpus issue, directed to the respondent, requiring the respondent to produce the said relator, JOEL TILLINGER before this Court at a time and place to be specified in said Writ, to the end that this Court may inquire into the facts of Relator's detention.

Dated: Brooklyn, New York
July 2, 1975

ROBERT I. WEISWASSER

WEISWASSER & WEISWASSER
Attorneys for Relator
32 Court Street
Brooklyn, New York 11201
522-1666

STATE OF NEW YORK)
: SS.:
COUNTY OF KINGS)

ROBERT I. WEISWASSER, being duly sworn, deposes and says, that he is the petitioner in the within proceeding; that he had read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief and that as to those matters, he believes it to be true.

ROBERT I. WEISWASSER

Sworn to before me this
2nd day of July, 1975.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA, ex rel.
JOEL TILLINGER,

Petitioner,

- against -

THE WARDEN, QUEENS HOUSE OF
DETENTION FOR MEN,

Respondent.

- - - - - - - - - - - - - - - - - - - -x

No. 75-C-1061

Memorandum of Decision
and Order

July 16, 1975

MISHLER, CH. J.

The petitioner was taken into custody pursuant to a Governor's warrant on June 20, 1975, based on a warrant issued by the State of Florida charging the defendant with a crime allegedly committed in April, 1971. This is an application for release on bail.

The petitioner concedes that he is the person charged in the Florida indictment. He alleges that bail is not available to him under the laws of the State of New York because of this concession.

The petitioner states that his arrest on June 20, 1975 was the third occasion on which he was taken into custody

pursuant to a Governor's warrant. On each of the two previous occasions he was released because of Florida's failure to act within 90 days of the date of arrest. These allegations are not contested by the State, and no reason is offered for the failure of the State of Florida to proceed.

The limited jurisdiction of this court to entertain a habeas corpus petition reviewing a state extradition proceeding is fully stated in United States ex rel. Tucker v. Donovan, 321 F.2d 114, 116 (2d Cir. 1963) as follows:

> On application for habeas corpus in extradition proceedings, the only questions properly before a court in the asylum state -- be the court state or federal -- is whether (1) a crime has been charged in the demanding state; (2) the fugitive in custody is the person so charged; and (3) the fugitive was in the demanding state at the time the alleged crime was committed. Johnson v. Matthews, 86 U.S.App.2d 376, 182 F.2d 677, 679, cert. denied 340 U.S. 828, 71 S.Ct. 65, 95 L.Ed. 608 (1950). The reasons for limiting the habeas corpus remedy to those grounds are aptly stated in Johnson v. Matthews, supra, and in Sweeney v. Woodall, 344 U.S. 86, 89-90, 73 S.Ct. 139, 97 L.Ed. 114 (1952). The salutary purposes of the extradition laws, adopted in substantially the same form by 44 of the 50 states, Uniform Criminal Extradition Act (1936) would be frustrated and divided were claims of the kind raised here examined by a federal court in the asylum state./1

/1 In Tucker, the petitioner claimed a violation of his sixth amendment right to counsel. Tucker had been convicted in the demanding state, and escaped from custody.

Ordinarily, the district court has no right to fix bail in a habeas corpus proceeding where the petitioner challenges the right of the demanding state to have him removed from the asylum state. The authority to release the person so charged usually rests in the demanding state. Walden v. Mosely, 312 F.Supp. 855, 860 (N.D. Miss. 1970). United States ex rel. Ackerman v. Commonwealth of Pennsylvania, 133 F.Supp. 627 (W.D. Pa. 1955).

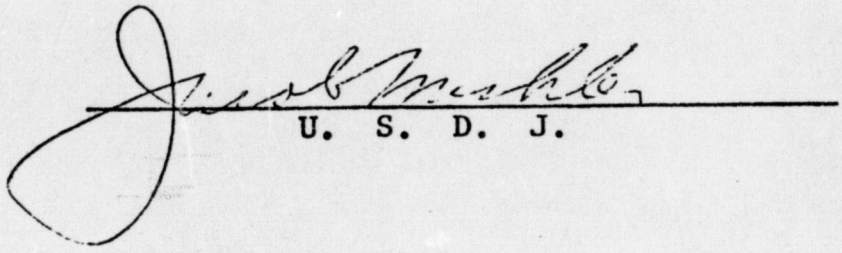
Under the unusual facts of this case where the defendant has been held in custody for two periods of 90 days, and the State of Florida has failed to act, the petitioner should be released on bail, in the amount of $5,000 (surety company bond)[/2]. Release is stayed until July 31, 1975 at 1 p.m. to afford the State of Florida a last opporunity to proceed.[/3]

/2 It is pertinent to note that in the Tucker case, the Court of Appeals released petitioner on bail in the amount of $500 pending an application for certiorari to the Supreme Court.

/3 The District Attorney of Queens County appeared, but took no position on the issue

The motion to fix bail is granted upon the terms and conditions indicated, and it is

SO ORDERED.



U. S. D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA,
ex rel. JOEL TILLINGER,

Petitioner,

- against -

THE WARDEN, QUEENS HOUSE OF
DETENTION FOR MEN,

Respondent.

- - - - - - - - - - - - - - - - - - -x

No. 75-C-1061

Memorandum of Decision
and Order

July 21, 1975

The memorandum of decision and order of this court dated July 16, 1975 directed that the defendant be released from custody upon posting bail in the amount of $5,000 (surety company bond). His release was stayed until July 31, 1975 at 1 p.m. to afford the State of Florida a last opportunity to proceed.

The court's memorandum of decision and order was based on a representation that the petitioner had twice been taken into custody pursuant to a Governor's warrant and thereafter released when Florida failed to act within 90 days of the date of arrest. The court is now advised that the petitioner is presently in custody pursuant to a Governor's warrant but the two prior commitments were pursuant to fugitive

warrants issued by the State of Florida.

Upon the consent of the District Attorney of Queens County, (letter of July 19, 1975 attached hereto,) and for the reasons set forth in the memorandum of decision and order of July 16, 1975, the order is modified to the extent that bail is reduced to the sum of $1,000 (surety company bond) and it is directed that the petitioner be released upon posting of bail.

SO ORDERED.

This memorandum of decision and order modifies the memorandum of decision and order of July 16, 1975.

U. S. D. J.

WEISWASSER & WEISWASSER
COUNSELORS AT LAW
32 COURT STREET
BROOKLYN, N. Y. 11201

(212) 522-1666

NEW YORK AND FLORIDA BAR
ROBERT I. WEISWASSER
HOWARD H. WEISWASSER

July 19, 1975

Honorable Jacob Mishler
Chief Judge
United States District Court
Eastern District of New York
Brooklyn, New York 11201

Re:U.S.A. ex rel. Joel Tillinger etc.
Docket No. 75-C-1061

Dear Judge Mishler:

I again apologize, as I did in open court yesterday, for the ambiguities contained in the petition which led you to a misunderstanding of the facts in the above captioned matter.

To make the record quite clear, the warrants of December,1974 and February, 1975 were in fact fugitive warrants and not Governor's warrants. The only Governor's warrant ever issued is the present warrant, the subject of the matter now pending before this Honorable Court.

In view of all the unusual circumstances of this case, I feel that the Petitioner should be admitted to bail now, pending the outcome of the litigation before Judge Bramwell; and I am joined in this viewpoint by Mr. Sussman, the Assistant District Attorney of Queens County in charge of handling extradition matters.

The Petitioner was admitted to bail in the amount of $1,000.00 (surety company bond) on the prior warrant, and appeared several times in court pursuant thereto. Both Mr. Sussman and meyself agree that no larger bail is required. Unfortunately, the New York State Courts feel they have no right to fix bail under a Governor's warrant.

As requested by Your Honor, the District Attorney of Queens County acknowledges his consent to the foregoing by affixing the authorized signature below.

Consented to:

Assistant District Attorney
Queens County

Respectfully,

Robert I. Weiswasser

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ AUG 11 75 ★
TIME A.M.
P.M.

- X

UNITED STATES OF AMERICA ex rel. JOEL TILLINGER,

Petitioner

-against-

DISTRICT ATTORNEY, DADE COUNTY, FLORIDA, and WARDEN, QUEENS' HOUSE OF DETENTION, N.Y., and DISTRICT ATTORNEY, QUEENS' COUNTY,

Respondents.

75 C 1061

ORDER TO SHOW CAUSE

- X

BRAMWELL, D. J.

The attached petition for a writ of habeas corpus, dated July 2, 1975, was filed in this court on the same date. Petitioner has been admitted to bail by order of Mishler, Ch. J., dated July 16, 1975, as modified by an order dated July 21, 1975, pending the outcome of this habeas corpus proceeding.

Petitioner was being held in custody pursuant to a Governor's warrant dated June 20, 1975, based on a warrant issued by the State of Florida. For the reasons set forth by petitioner in his application to this court, petitioner claims he is being denied his constitutional right to a speedy trial. Jurisdiction of this court is based on 28 U.S.C. 2241(c)(3). The District Attorney of Dade County, Florida is made a party since, in extradition matters, ". . . the State holding the

prisoner in immediate confinement acts as agent for the demanding State . . ." Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 487, 498-9, 93 S.Ct. 1123, 1131 (1973).

It is ORDERED that:

(1) The District Attorney of Dade County, Florida show cause before this court, by the filing of a return to the petition, why a writ of habeas corpus should not be issued;

(2) Within fifteen (15) days of receipt of this order, the District Attorney of Dade County, Florida, shall serve a copy of his return on the petitioner herein and file the original thereof, with proof of such service, with the Clerk of this Court,

(3) Service of a copy of this order shall be made by the Clerk of this Court by mailing a copy thereof, by certified mail, return receipt requested, together with a copy of the petition, to the District Attorney, Dade County, Florida, to the District Attorney, Queens' County, New York, and to counsel for the petitioner.

SO ORDERED.

Henry Bramwell
U. S. D. J.

Dated: Brooklyn, N. Y.
August 6, 1975

FPI-SS-3-17-72-30M-9153

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR DADE COUNTY

CASE NO. 71-3757

STATE OF FLORIDA :
:
vs. : AFFIDAVIT IN AID OF EXTRADITION
:
JOEL LAWRENCE TILLINGER :
:

COUNTY OF DADE)
) ss
STATE OF FLORIDA)

PERSONALLY APPEARED before me, an officer duly authorized to administer oaths under the laws of the State of Florida, JOHN LIPINSKI, who being first duly sworn, deposes, and says, under oath:

I, JOHN LIPINSKI, am presently an Assistant State Attorney, Dade County, Florida. I have been so employed from September, 1973, continually to the present time.

In my capacity as an Assistant State Attorney I have had occasion to do work as an Extradition Officer for this office.

On August 20, 1975, I examined the Circuit Court files Eleventh Judicial Circuit, Dade County, Florida, in cases 71-3757, 71-6903, and 71-4802 in connection with a Joel Lawrence Tillinger as a part of my extradition duties.

These files did not contain a Demand for Speedy Trial pursuant to Rule 3.191 (b)(3), Florida Rules of Criminal Procedure (a copy of which is attached). Rule 3.191 (b)(3) proscribes the procedure

by which a prisoner in a penal or correctional institution outside of Florida may demand a Speedy Trial on charges pending against him in Florida. My investigation reveals that Joel Lawrence Tillinger has not filed such a demand and that, according to the Speedy Trial Rule in Florida (3. 191) he is not entitled to a discharge on the basis he was denied a Speedy Trial.

FURTHER AFFIANT SAYETH NOT.

JOHN LIPINSKI
Assistant State Attorney
Dade County, Florida

SWORN TO AND SUBSCRIBED before me this 21 day of August, 1975.

NOTARY PUBLIC, STATE OF FLORIDA

My Commission expires:

commence when such demand has been properly filed and served. If such person is serving in Florida or elsewhere a sentence of imprisonment for an unrelated crime, the operation of this section shall not be effective until such person is no longer imprisoned and becomes available for trial, nor until such person has abandoned or waived further proceedings under §(b)(2) of this Rule if such have been initiated.

(a)(3) Commencement of Trial. A person shall be deemed to have been brought to trial if the trial commences within the time herein provided. The trial is deemed to have commenced when the trial jury panel is sworn for voir dire examination, or, upon waiver of a jury trial, when the trial proceedings begin before the judge.

(b)(1) Prisoners in Florida; Trial Without Demand. Except as otherwise provided, a person who is imprisoned in a penal or correctional institution of this State or a subdivision thereof and who is charged by indictment or information, whether or not a detainer has been filed against such person, shall without demand be brought to trial within one year if the crime charged be a misdemeanor or felony not involving violence, within two years if the crime charged be a noncapital felony involving violence, or if the crime charged be punishable by death; and if not brought to trial within such term shall upon motion timely filed with the court having jurisdiction and served upon the prosecuting attorney be forever discharged from the crime. The period of time established by this rule shall commence when the person is taken into custody as a result of the subject conduct or criminal episode, or when the subject charge of crime is filed, whichever is earlier, whether or not such period may commence to run before such person began to serve his term of imprisonment. The periods of time established by this section shall govern if the person is released from confinement while less than six months of such period of time for trial remains; if more than six months of such period of time for trial remains upon release from confinement, this section shall cease to apply and the rights of such person and of the State shall be governed by §(a)(1) and (2).

(b)(2) Prisoners in Florida; Trial Upon Demand. Except as otherwise provided, a person who is imprisoned in a penal or correctional institution of this State or a subdivision thereof and who is charged by indictment or information, whether or not a detainer has been filed against such person, shall upon demand filed with the court having jurisdiction and upon service of a copy of such demand upon the prosecuting attorney be brought to trial within six months and if not brought to trial within such period of time for trial shall upon motion timely filed with the court and served on the prosecuting attorney be forever discharged from the crime; provided, the State shall waive objection to merely formal defects in the demand so long as notice of the crime sought to be discharged and the relief otherwise sought is sufficient to inform the court and the prosecuting attorney. The period of time for trial established by this section shall commence when such demand is filed and served; and such period of time for trial shall continue to run if such person is released from confinement during such time, provided the court shall ascertain before granting motion for discharge that such person has been continuously available for trial following such release. If a person who files a demand for trial or for discharge under this rule becomes involuntarily unavailable for trial, the court shall enter such orders as are in the interests of justice. A person who elects to proceed under this section may not thereafter proceed under §(a)(2) unless he first files with the court and serves upon the prosecuting attorney a waiver or abandonment of all motions or proceedings under this section.

(b)(3) Prisoners Outside Jurisdiction. A person who is imprisoned upon conviction of a crime in a penal or correctional institution outside the jurisdiction of this State or a subdivision thereof, and who is charged with a crime by indictment or information issued or filed under the laws of this State, is entitled to a speedy trial upon demand filed with the court having jurisdiction and upon service on the prosecuting attorney. After the demand has been filed, such person is entitled to trial within the periods of time established by §(b)(2), commencing after the prosecuting attorney has filed a detainer or has otherwise attempted to secure the presence of the accused for trial or within a reasonable time as determined by the court if the prosecutor has not acted in response to the demand for trial; and if not brought to trial within such period of time shall upon motion timely filed with the court and served upon the prosecuting attorney be forever discharged from the crime; provided the court before granting such motion shall ascertain that such person has been continuously available for return to this jurisdiction for trial during such period of time. No rights shall accrue to a person under this section if such person refuses to execute every waiver, consent or release necessary to secure his return to this jurisdiction, or if the custodial officials of the jurisdiction in which the prisoner is confined refuse to release him for return to this jurisdiction for trial while such refusal continues.

The primary burden for bringing about a speedy trial is on the defendant; however, upon demand, the State must act affirmatively to give such person a speedy trial and must employ all reasonable means to do so. A demand for speedy trial shall state the prisoner's name, place of incarceration, nature and term of sentence and tentative expiration date, and the nature and date of the charge, as well as the court and county in which said charge is pending in Florida; if a detainer has been filed, and its

withdrawal is part of the relief sought, the prisoner shall so state.

(c) Demand for Speedy Trial; Accused is Bound. A demand for speedy trial binds the accused and the State. No demand for speedy trial shall be filed or served unless the accused has a bona fide desire to obtain trial sooner than otherwise might be provided. A demand for speedy trial shall be deemed a pleading by the accused that he is available for trial, has diligently investigated his case, and that he is prepared or will be prepared for trial. Such demand may not thereafter be waived or withdrawn by the accused, except on order of the court, with consent of the State or on good cause shown. Good cause for continuances or delay on behalf of the accused shall not thereafter include lack of preparation, failure to obtain evidence or presence of witnesses, failure to have counsel, or other nonreadiness for trial, except as to matters which may arise after the demand for trial is filed and which could not reasonably have been anticipated by the accused or his counsel. A person who has demanded speedy trial, who thereafter is not prepared for trial, is not entitled to continuance or delay except as provided in this Rule.

(d)(1) Motion for Discharge; Trial; When Timely. A motion for discharge shall be timely if filed and served on or after the expiration of the periods of time for trial provided for herein; however, a motion for discharge filed before expiration of the period of time for trial shall be deemed effective only as of the date of expiration of the period of time for trial.

(d)(2) When Time May Be Extended. The periods of time established by this Rule for trial may at any time be waived or extended by order of the court (i) upon stipulation, signed in proper person or by counsel, by the party against whom the stipulation is sought to be enforced, provided the period of time sought to be extended has not expired at the time of signing, or (ii) on the court's own motion or motion by either party in exceptional circumstances as hereafter defined, or (iii) with good cause shown by the accused upon waiver by him or on his behalf, or (iv) a period of reasonable and necessary delay resulting from proceedings including but not limited to an examination and hearing to determine the mental competency or physical ability of the defendant to stand trial, for hearings on pre-trial motions, [illegible] and for trial of other pending criminal charges against the accused. For the purposes of this Rule, any other delay shall be unexcused.

(d)(3) Continuances; Effect on Motion. If trial of the accused does not commence within the periods of time established by this rule, a pending motion for discharge shall be granted by the court unless it is shown that (i) a time extension has been ordered as provided in 3(d)(2), or (ii) the failure to hold trial is due to the unexcused actions or unexcused decisions of the accused, or of a co-defendant in the same trial. If a continuance or delay is attributable to the accused and is not excused, the pending motion for discharge shall on motion by the State be voidable by the court in the interests of justice; provided, however, trial shall be scheduled and commence within 90 days [illegible] 90 days [illegible] time of [illegible].

(e) Availability for Trial. The trial of an accused who is not available shall be held in abeyance while such person is unavailable. A person who has not been continuously available for trial during the term provided for herein is not entitled to be discharged; no presumption of non-availability attaches, but if the State objects to discharge and presents any evidence tending to show non-availability, the accused then must by competent proof establish continuous availability during the term.

If an accused voluntarily removes himself from the jurisdiction of the court or otherwise acts to make himself unavailable for trial the right to trial within the time herein provided shall on motion by the State be voidable by the court in the interests of justice. Upon such accused becoming available for trial and upon notice thereof by the accused or his counsel to both the court having jurisdiction over the trial and to the office of the prosecutor, or upon being retaken into custody, the time within which trial is to commence shall be as herein provided and begin anew.

(f) Exceptional Circumstances. As permitted by this Rule, the court may order an extension of time or continuance where exceptional circumstances are shown to exist; exceptional circumstances shall not include general congestion of the court's docket, lack of diligent preparation or failure to obtain available witnesses, or other avoidable or foreseeable delays.

Exceptional circumstances are those which as a matter of substantial justice to the accused or the State or both require an order by the court. Such circumstances include (i) unexpected illness or unexpected incapacity or unforeseeable and unavoidable absence of a person whose presence or testimony is uniquely necessary for a full and adequate trial; (ii) a showing by the State that the case is so unusual and so complex due to the number of defendants or the nature of the prosecution or otherwise, that it is unreasonable to expect adequate investigation or preparation within the periods of time established by this rule; (iii) a showing by the State that specific evidence or testimony is not available despite diligent efforts to secure it, but will become available at a later time; provided, not more than two continuances shall be granted on this ground; (iv) a showing by the accused or the State of necessity for delay grounded on developments which

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA ex rel.
JOEL TILLINGER,

Petitioner,

-against-

DISTRICT ATTORNEY, DADE COUNTY, FLORIDA, and WARDEN QUEENS' HOUSE OF DETENTION, NEW YORK, and DISTRICT ATTORNEY, QUEENS' COUNTY, NEW YORK

Respondents.

- X

75 C 1061

MEMORANDUM AND ORDER

BRAMWELL, D. J.

A petition for a writ of habeas corpus was filed in this court on July 2, 1975. Petitioner Tillinger was being held in custody pursuant to a Governor's warrant dated June 20, 1975, based on a warrant issued by the State of Florida. Petitioner, who was admitted to bail pending the outcome of this proceeding, asserts a denial of his constitutional right to a speedy trial.

Petitioner had twice before been taken into custody pursuant to fugitive warrants issued by the State of Florida, charging the defendant with a crime allegedly committed in April, 1971. Although the first warrant had

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been issued in December, 1974, petitioner had first been advised that Florida had charges against him while he was incarcerated in the Auburn Correctional Center in June, 1973. According to the application before the court, petitioner then advised the Florida authorities that he wished to dispose of the charges against him. According to usual practice, Florida did not file its detainer until after petitioner's parole in 1974, at which time the Queens County District Attorney, acting as agent for Florida, held petitioner for Florida. Florida failed to take steps to bring the relator to Florida to answer to the charges. As provided by statute, Tillinger was released after 90 days. Pursuant to a second fugitive warrant, issued by Florida in February, 1975, petitioner was arrested again, and, like the first time, the warrant was dismissed after 90 days. Finally, on June 20, 1975, the relator was arrested on a Governor's warrant, which he now seeks to test before this court.

This court issued an order to show cause on August 6, 1975, naming as one respondent the District Attorney of Dade County, Florida, who was made a party since, in extradition matters, "the State holding the prisoner in confinement acts as agent for the demanding State . . . ."

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Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 487, 498-9, 93 S.Ct. 1123, 1131 (1973). Said order to show cause was forwarded to the Florida respondent by certified mail, and a return receipt, filed in this court on August 15, 1975, shows that service was effectuated on August 12, 1975.

A copy of an"affidavit in aid of extradition" dated August 21, 1975, which was directed to the Circuit Court of Dade County, Florida, was received by the Office of the District Attorney, Queens' County, New York; said office forwarded a copy thereof to this court.

It appears from the affidavit that the Florida authorities examined the Circuit Court files relating to petitioner Tillinger's indictments on August 20, 1975. It is stated that "[t]hese files did not contain a demand for Speedy Trial pursuant to Rule 3.191 (b)(3), Florida Rules of Criminal Procedure." The affiant concluded that petitioner "is not entitled to a discharge on the basis that he was denied a speedy trial."

In Barker v. Wingo, 407 U.S. 514, 528, 92 S.Ct. 2182, 2191, 33 L.Ed. 2d 101 (1972), the United States Supreme Court "reject[ed] . . . the rule that a defendant who fails to demand a speedy trial forever waives his

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to answer to the charges against him. In sum, petitioner has stated a claim of deprivation of his constitutional right to a speedy trial that, on the basis of the papers before this court, admits of judicial relief.

We note that, ordinarily, a court in the asylum state in extradition matters will limit its investigation to the circumstances of the extradition. See United States ex rel. Tucker v. Donovan, 321 F.2d 114, 116 (2d Cir. 1963). Generally, only the demanding State, in this case Florida, is authorized to release the person charged.

For this reason, we are affording the State of Florida thirty days from the date of this order in which to extradite Tillinger, so that he may both answer to the charges and assert his claims in that State. However, we are also mindful of our duty to safeguard the constitutional rights of those persons who petition this court for redress of deprivations thereto, especially in light of the Braden decision, supra. The Braden Court extended the jurisdictional rule with regard to habeas corpus relief, stating that "in many instances the district in which petitioners are held will be the most convenient forum for the litigation of their claims." 410 U.S. at 500, 93 S.Ct. at 1132.

We therefore hold that if petitioner has not been removed to Florida within thirty days from the date of

this order, a hearing to determine whether the indictment shall be dismissed will be placed on our calendar on application by petitioner's attorney.

The respondent, District Attorney of Dade County, Florida, is ORDERED to notify this court if such hearing is unnecessary, i.e., if the condition of extradition has been met.

The Clerk of this Court is directed to forward a copy of this order by regular mail to the District Attorney, Queens' County, New York and to counsel for the petitioner; and to forward a copy by certified mail, return receipt requested, to the District Attorney, Dade County, Florida.

SO ORDERED.

Henry Bramwell
U. S. D. J.

Dated: Brooklyn, New York
September 9, 1975

PPI—SS—3-17-72—30M—9153

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA ex rel.
JOEL TILLINGER,

Petitioner,

-against-

DISTRICT ATTORNEY, DADE COUNTY, FLORIDA, and WARDEN, QUEENS' HOUSE OF DETENTION, N.Y., and DISTRICT ATTORNEY, QUEENS COUNTY,

Respondents.

----------x

75 C 1061

MOTION TO MODIFY ORDER

or

IN THE ALTERNATIVE, ISSUE CERTIFICATE OF PROBABLE CAUSE FOR APPEAL

Petitioner, by his attorneys, WEISWASSER & WEISWASSER, respectfully moves this Honorable Court to modify its Memorandum and Order dated the 9th day of September, 1975, and in support thereof would show as follows:

That in view of all the facts as fully set forth in the Court's Memorandum and Order, as aforesaid, it would work an undue hardship on Petitioner to have him removed to Florida to test his claims of deprivation of constitutional rights. Petitioner would be forced to post new bail in the Florida State Courts, hire additional local counsel and expend large sums of money to maintain himself in room and board away from his home in Queens County. Even should the Florida State Court permit him to return to New York to live, Petitioner would be forced to pay air fair back and forth on each court appearance.

That the most convenient forum for the litigation of Petitioner claims is before this Honorable Court. The main witness in support of Petitioner's allegation that in June of

1973 he formally complied with the requirements of the Intersate "Agreement on Detainers" (see § 580.20, New York Criminal Procedure Law) is one JEROME ROSENBERG, presently a prisoner in New York State. A copy of an affidavit by MR. ROSENBERG is attached hereto and made a part hereof, so that this Honorable Court may see the absolute necessity of this witness at a hearing. All other witnesses relating to the prior occassions on which the State of Florida caused a fugitive warrant to be filed are within the State of New York, and in fact many witnesses are within the Eastern District of New York. The extreme difficulty and financial hardship which the Petitioner would have to bear in securing the attendance of such witnesses at a hearing in the Florida State Courts is enormous, and beyond Petitioner's ability.

That lastly, but by no means leastly, Petitioner maintains that he is a "Third Party Beneficiary" under the Interstate "Agreement on Detainers" (Supra) and has standing before this Honorable Court to seek enforcement of the terms of that Agreement as to the Sovereign States of Florida and New York.

Petitioner therefore prays that this Honorable Court modify its aforesaid Memorandum and Order so as to grant a hearing before itself as soon as possible to determine if in fact the Indictments pending against Petitioner in the State of Florida should be dismissed, and vacating that portion of the Memorandum and Order granting Florida 30 days in which to remove Petitioner to Florida and thereby causing Petitioner

great hardship and financial expense.

In the alternative, if this Honorable Court does not see fit to grant the aforesaid relief, Petitioner prays this Court to issue a Certificate of Probable Cause for Appeal under Rule 22 (b) of the Federal Rules of Appellate Procedure so that the substantial questions of law raised by Petitioner may be reviewed.

The District Attorney of the County of Queens ~~makes~~ takes no ~~objection~~ position to this Honorable Court modifying its Memorandum and Order as prayed for, nor does the District Attorney object to the alternative relief of the issuance of a Certificate of Probable Cause to Appeal. The District Attorney of Queens County acknowledges his lack of objection to all of the foregoing by affixing the authorized signature below.

WEISWASSER & WEISWASSER
32 Court Street
Brooklyn, New York
212 522-1666

Assistant District Attorney
Queens County.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X

UNITED STATES OF AMERICA, ex rel.
JOEL TILLINGER,

Petitioner,

AFFIDAVIT

-against-

THE WARDEN, QUEENS HOUSE OF
DETENTION,

Respondent.
----------X

STATE OF NEW YORK)
: SS:
COUNTY OF NEW YORK)

JEROME ROSENBERG, being duly sworn deposes and says:

That I am presently confined at the Federal Detention Headquarters, 427 West Street, New York, New York.

That during the month of June, 1973, I was confined as an inmate at Ossining Correctional Facility at Ossining, New York. During that month I became acquainted with another inmate by the name of Joel Tillinger.

That during my confinement in Ossining I performed many administrative functions for the Head Clerk's Office of the facility. Among these functions, since I had had legal training, I was often called upon by the Head Clerk's Office to advise inmates of the facility of their right to a speedy disposition of warrants which had been filed against them in the facility as detainers.

That on or about June 18, 1973, Joel Tillinger received

information that three (3) charges had been filed against him by the State of Florida. These were reported to Joel Tillinger by letter dated June 18, 1973, a copy of which is attached hereto, marked Exhibit 1, and made a part hereof. I saw this letter and discussed it with Joel Tillinger, and at the request of the Head Clerk's Office I advised Joel Tillinger of his right to request a speedy disposition of these charges by the State of Florida. At the time I had with me two (2) copies of a form provided by the New York State Department of Correction for the purpose of notice and explanation of this right. This form is called "Agreement on Detainers: Form I". A sample copy of this form is attached hereto, marked Exhibit 2, and made a part hereof.

That Joel Tillinger told me that he did want a speedy disposition of the charges against him in Florida so that if he were to be so unfortunate as to be convicted on any of those charges the sentence he might receive might run concurrently with the sentence he was serving. In my presence Joel Tillinger signed the two (2) copies of Form I in the place indicated on page two (2) of the form.

That at the same time I also had with me the New York State "Agreement on Detainers: Form II" in five (5) copies. A sample copy of this form is attached hereto and marked Exhibit 3, and made a part hereof. I explained to Joel Tillinger that these five (5) copies were to be signed by him as the formal method of his requesting a speedy disposition of the Florida charges filed against him with the authorities at

Ossining. In my presence Joel Tillinger signed the five (5) copies in the place indicated on page two (2) of the form.

That I then took the two (2) signed copies of Form I, and the five (5) signed copies of Form 2 back to the Head Clerk's Office and left them there as I had been instructed to do, and as I had done in all other similar cases. I do not know what happened to them thereafter. I later talked with Joel Tillinger several times during the short period he remained at Ossining, and both he and I believed that he had effectively requested the speedy disposition of the Florida charges filed against him.

Sworn to before me this 21
day of July, 1975

JEROME ROSENBERG

E-PS-107REV

OSSINING CORRECTIONAL FACILITY

INTER-DEPARTMENTAL COMMUNICATION

WARRANT FILED LETTER NO. 459/1973 June 18, 1973

Deputy Warden
Division of Parole, Institution
Central File

155-826 Joel Tillinger

Dear Sir:

Kindly note against the above-noted inmate the following warrant:

State of Florida, Dade County, 3 capias and information charging: 71-6903 Buying, Receiving or Concealing Stolen Property, A/C #71-3757 Buying, Receiving or Concealing Stolen Property, and A/C#71-4602 Forgery, Uttering a Forged Instrument, Grand Larceny by Unlawful Use of Credit Card and Buying, Receiving or Concealing Stolen Property.

Very truly yours,

Stenographer Sr. Clk.

CONTENTS RECEIVED AND NOTED
cc: Albany Office
Service Unit

Deputy Superintendent

"Exhibit 1"

Agreement on Detainers : Form I

In duplicate. One copy of this form, signed by the prisoner and the superintendent should be retained by the superintendent. One copy, signed by the superintendent should be retained by the prisoner.

NOTICE OF UNTRIED INDICTMENT, INFORMATION OR COMPLAINT AND OF RIGHT TO REQUEST DISPOSITION

Inmate No. Inst.

Pursuant to the Agreement on detainers, you are hereby informed that the following are the untried indictments, informations, or complaints against you concerning which the undersigned has knowledge, and the source and contexts of each.

You are hereby further advised that by the provisions of said Agreement you have the right to request the appropriate prosecuting officer of the jurisdiction in which any such indictment, information or complaint is pending and the appropriate court that a final disposition be made thereof. You shall then be brought to trial within 180 days, unless extended pursuant to provisions of the Agreement, after you have caused to be delivered to said prosecuting officer and court written notice of the place of your imprisonment and you said request, together with a certificate of the custodial authority as more fully set forthiin said Agreement. However, the court having jurisdictionof the matter may grant any necessary or reasonable continuance.

Your request for final disposition will operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against you from the State to whose prosecuting official your rqquest for final disposition is specifically directed. Your request will also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein and a a waiver of extradition to the state of trial to serve any sentence there imposed upon you, after completion of your term of imprisonment in this state. Your request will also constitute a consent by you to the production of your body in any court where your presence may be required in order to effectuate the purposes of the Agreement on Detainers and a further consent voluntarily to be returned to the institution in which you are now confined.

Should you desire such a request for final disposition of any untried indictment, information or complaint, you are to notify _____ of the institution in which you are confined.

Should you desire such a request for final dispostion of any untried indictment, information or complaint, you are to notify & _____, of the institution in which you are confined.

You are also advised that under provisions of said Agreement the prosecuting officer of a jurisdiction in which any such indictment, information or complaint is pending may institute proceedings to obtain a final dispostion thereof. In such event, you may oppose the request that you be delivered to such prosecuting

"Exhibit 2"

officer or court. You may request the Governor of this state to disarprove any such request for your temporary custody but you cannot oppose delivery on the grounds that the Governor has not affirmatively consented to or ordered such delivery.

DATED: _____

_____
(Insert name and title of custodial authority)

BY: _____
Superintendent

RECEIVED

DATE _____

INMATE _____ no. _____

Five copies, if only one juriddiction with the state involved has an indictment information or complaint pending. Additional copies will be necessary for prosecuting officials and clerks of court if detainers have been lodged by other jurisdictions within the state invloved. One copy should be retained by the prisoner. One signed copy should be retained by the superintendent. Signed copies must be sent to the Agreement Administrator of the state which has the prisoner incarcerated, the prosecuting official of the jurisdiction which placed the detainer, and the clerk of the court which has jurisdiction over the matter. The copies for the prosecuting officials and the court must be transmitted by certified or registered mail, return receipt requested.

INMATES'S NOTICE OF PLACE OF IMPRISONMENT AND REQUEST FOR DISPOSITION OF INDICTMENTS, INFORMATIONS OR COMPLAINTS

TO: _____, Prosecuting Officer _____
(jurisdiction)

_____, Court _____
(jurisdiction)

And to all other prosecuting officers and courts of jurisdiction listed below from which indictments, informations or complaints are pending.

You are hereby notified that the undersigned is now imprisoned in _____ at _____.
(institution) (town and state)

and I hereby request that a final disposition be made of the following indictments, informations or complaints now pending against me:

Failure to take action in accordance with the Agreement on Detainers, to which your state is committed by law: will result in the invalidation of the indictments, informations or complaints.

I hereby agree that this request will operate as a request for final disposttion of all untried indictments, informations or complaints on the basis of which detainers have been lodged against me from your state.

I also agree that this request shall be deemed to be my waiver of extradition with respect to any charge or proceeding contemplated hereby or included herein, and a waiver of extradition to your state to serve any sentence there imposed upon me, after completion of my term of imprisonment in this state. I also agree that this request shall constitute a consent by me to the production of my body in any court where my presence may be required in order to effectuate the purposes of the Agreement on Detainers and I further consent voluntarily to be returned to the institution in which I now am confined.

"Exhibit 3"

If jurisdiction over this matter is properly in another agency, court or officer, please designate the proper agency, court or officer and return this form to the sender.

The required Certificate of Inmate Status and Offer of Temporary Custody are attached.

DATED:_____

_____
(inmates name and number)

The inmate must indicate below whether he has counsel or wishes the court in the receiving state to appoint counsel for purposes of any proceedings preliminary to trial in the receiving state which may take place before his delivery to the jurisdiction in which the indictment, information or complaint is pending. Failure to list the name and address of counsel will be construed to indicate the inmate's consent to the appointment of counsel by the appropriate court in the receiving state.

A. My counsel is _____ _____
(name of counsel)

whose address is _____ _____
(street, city and state)

B. I request the court to appoint counsel

_____
(inmate's signature)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, ex rel.
JOEL TILLINGER,

Petitioner,

-against-

DISTRICT ATTORNEY, DADE COUNTY, FLORIDA, and WARDEN, QUEENS' HOUSE OF DETENTION, N.Y., and DISTRICT ATTORNEY, QUEENS COUNTY,

Respondents

----------x

75 C 1061

CERTIFICATE OF PROBABLE CAUSE TO APPEAL

BRAMWELL, D. J.

Petitioner, by his attorneys, has moved this Court by motion dated October 2, 1975, for the issuance of a Certificate of Probable Cause to Appeal under Rule 22 (b) of the Federal Rules of Appellate Procedure in relation to this Court's Memorandum and Order dated September 9, 1975.

Upon review of the said Memorandum and Order I hereby grant Petitioner's motion and a Certificate of Propable Cause to Appeal is hereby issued.

SO ORDERED.

Henry Bramwell (S)
U. S. D. J.

Dated: Brooklyn, New York
October 3, 1975

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

X

UNITED STATES OF AMERICA, ex rel.
JOEL TILLINGER,

75 C 1061

Petitioner,

-against-

DISTRICT ATTORNEY, DADE COUNTY
FLORIDA, and WARDEN, QUEENS HOUSE
OF DETENTION, N.Y. and DISTRICT
ATTORNEY, QUEENS COUNTY,

NOTICE OF APPEAL

Respondents.

X

NOTICE IS HEREBY GIVEN that JOEL TILLINGER, Petitioner above named, hereby appeals to the UNITED STATES COURT OF APPEALS for the Second Circuit from the Memorandum and Order of the Honorable HENRY BRAMWELL, dated the 9th day of September, 1975, and filed in the United States District Court for the Eastern District of New York on the 10th day of September, 1975, said Order denying Petitioners Writ of Habeas Corpus.

Dated: October 2,1975

WEISWASSER & WEISWASSER
32 Court Street
Brooklyn, New York 11201
212 522-1666

TO:
CLERK, UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DISTRICT ATTORNEY, DADE COUNTY, FLORIDA

WARDEN, QUEENS HOUSE OF DETENTION, N.Y.

DISTRICT ATTORNEY, QUEENS COUNTY, N.Y.

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
: SS.:
COUNTY OF KINGS)

Dolores Mercado being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at Queens, New York. That on the 16th day of January, 1976 deponent served three (3) copies of the within Brief and Record upon the District Attorney, Queens County, 125-01 Queens Boulevard, Queens, NY 11450; District Attorney, Dade County, 1351 N. W. 12th Street, Miami, Florida; Attorney General, State of New York, 2 World Trade Center, New York, New York, the addresses designated by said attorneys for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in-a post office-official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Sworn to before me this
16th day of January, 1976

Marshall Blumenfeld

MARSHALL BLUMENFELD
Notary Public, State of New York
No. 41-0330070 Qual. in Queens Co.
Certificate Filed in New York County
Term Expires March 30, 19 77

Dolores Mercado